IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WA.No. 825 of 2003

AGAINST THE JUDGEMENT/ORDER IN OP.9800/1993 Dated 14/03/2003

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APPELLANT: PETITIONER

Y.THOMAS, RETIRED ASSISTANT ENGINEER,
CHIMONY DAM PROJECT, RESIDING AT JOY BHAVAN,
B.M.C.P.O., THRIKKAKARA, KOCHI - 21.

BY ADV. SRI.KRB.KAIMAL

RESPONDENTS: RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, IRRIGATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. CHIEF ENGINEER, IRRIGATION AND ADMINISTRATION, THIRUVANANTHAPURAM.

3. CHIEF ENGINEER, PROJECT-II, THIRUVANANTHAPURAM.

4. EXECUTIVE ENGINEER, CHIMONY DAM PROJECT DIVISION, CHIMONY DAM.P.O.

5. ASSISTANT EXECUTIVE ENGINEER, CHIMONY DAM PROJECT SUB DIVISION, NO.5, CHIMONY DAM.P.O. PIN 680 304.

6. SUB INSPECTOR OF POLICE, VARANDARAPPILLY POLICE STATION, VARANDARAPPILLY.

BY GOVERNMENT PLEADER SRI.BENNY GERVACIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON 13/09/2007 DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & A.K.BASHEER, JJ.

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W.A.No.825 OF 2003

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Dated this the 13th day of September, 2007

JUDGMENT

Radhakrishnan, J

This writ appeal is preferred by the appellant herein seeking a writ of certiorari to quash Exts.P41, P42, P46 and P48 (a) and to declare that no liability is outstanding against the petitioner to Government. Appellant/petitioner who was working as an Assistant Engineer, Store Section of Chimony Dam Project in the Irrigation Department of the State retired from service on superannuation from 29.2.92. From 1.10.91 onwards up to the date of retirement he had been on commuted leave of two successive spells. On his entering leave, the appellant had requested the Assistant Executive Engineer to make arrangements for taking over charge of the materials in the Godown and premises of the stores. But there was no response from the department. By Ext.P3 letter dated 22.10.91, the Assistant Executive Engineer had directed the appellant to hand over charge of materials to Assistant Engineer. According

to the appellant/petitioner, though he had gone over several times to hand over charge, the concerned Assistant Engineer did not take charge of stores. Appellant/petitioner brought the position to the notice of higher authorities by representations. As the charge of the stores could not in fact be handed over, the pensionary benefits such as regular pension, commuted pension and DCRG were not paid to the appellant/petitioner. Non Liability Certificate and Last Pay Certificate were also not issued to the appellant/petitioner. Hence the Appellant/petitioner filed O.P.No.10323/92 before this Hon'ble court for a direction to disburse terminal benefits and to issue NLC/LC and LPC. That original petition was disposed of by directing the respondents to finalise the liability of the appellant/petitioner and pass final orders within the prescribed time limit. Pursuant to that judgment, the liability was fixed at Rs.2,87,268/-. According to the petitioner fixation was done arbitrarily and without hearing him.

2. Learned Single Judge passed an interim order dated 25.6.98 directing the department to furnish the details of the

quantification of liability to the appellant/petitioner. In compliance with the said order, Ext.P44 statement of details was furnished by the department. Appellant/petitioner filed Ext.P45 objection against Ext.P44, detailed statement of quantification of liability. Objection was considered and Ext.P46 was revised and refixed at Rs.1,62,438.24/- after deducting the cost of Tyres stolen from the store.

3. The Executive Engineer by his letter dated 9.11.92, had informed the appellant/petitioner to intimate the department a convenient date for physical verification to hand over the charge of the store materials under his custody or sent his authorised agent for physical verification to hand over charge, failing which, it was ordered that the Executive Engineer would break open the store and assume charge of the materials in order to safeguard the interest of the department. It was stated that petitioner's reply dated 27.10.92 was unsatisfactory and that petitioner was least interested in handing over the charge of the store materials even though he had retired from service on 29.2.92. By Ext.P31, the petitioner was informed that he would

be personally responsible for the shortage of materials, if any, found during the verification. The petitioner had taken a stand that after his retirement attempts were made to remove the stocks without his knowledge and there was incidents of theft and his health reasons did not permit him to be present when requests were made. Due to non co-operation of the petitioner the department had to break up the godown on 29.11.92 and had to prepare an inventory in petitioner's absence.

4. As per Rule 3 Part III K.S.R., the liability of a pensioner shall be fixed at the most within three years of retirement. Even though the Department had repeatedly requested the petitioner to attend for verification of the store items, petitioner avoided the same. This shows the negligent attitude of the petitioner. Learned Single Judge took the view that as store keeper the petitioner should have co-operated with the department frankly and purposively and the attempt to shirk responsibility would be a conduct which cannot be supported. When the inventory shows that there is shortage of item, the custodian has necessarily to be answerable.

Considering the entire facts and circumstances of the case, we are of the view that the learned Single Judge has rightly dismissed the original petition. We find no reason to interfere with the judgment of the learned Single Judge. Hence, the writ appeal lacks merit and it is dismissed.

K.S.RADHAKRISHNAN, JUDGE

A.K.BASHEER, JUDGE

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